

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES. See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.

FILED BY CLERK
JUNE 24 2009
COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	
)	
Appellee,)	2 CA-CR 2008-0193
)	DEPARTMENT B
v.)	<u>MEMORANDUM DECISION</u>
)	Not for Publication
JUAN GILBERTO REYNOZA,)	Rule 111, Rules of
)	the Supreme Court
Appellant.)	
_____)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-39758

Honorable Frank Dawley, Judge Pro Tempore
Honorable Richard S. Fields, Judge

AFFIRMED

Gail Gianasi Natale

Phoenix
Attorney for Appellant

E C K E R S T R O M, Presiding Judge.

¶1 In April 1993, a jury found appellant Juan Reynoza guilty of conspiracy to sell, transfer, transport, or possess a narcotic drug for sale; transportation of a narcotic drug; and possession of a narcotic drug. Although Reynoza attended his trial, he did not return to court after the jury retired to deliberate. He was arrested on a bench warrant in 2008, and the court sentenced him to concurrent, mitigated prison terms of 5.25 years.

¶2 Counsel has filed a brief in compliance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999). She has provided “a detailed factual and procedural history of the case with citations to the record, [so] this court can satisfy itself that counsel has in fact thoroughly reviewed the record.” *Id.* ¶ 32. Reynoza has not filed a supplemental brief.

¶3 Although counsel avows she has reviewed the entire record and found no arguable issue to raise on appeal, she suggests we consider whether the trial court abused its discretion in declining to strike two prospective jurors for cause. These members of the jury pool were not seated as jurors because Reynoza and his codefendants used peremptory challenges to foreclose their selection. As counsel notes, shortly after Reynoza’s trial, our supreme court held that a trial court’s erroneous failure to excuse a prospective juror for cause is always reversible error. *State v. Huerta*, 175 Ariz. 262, 266-67, 855 P.2d 776, 780-81 (1993). But, as counsel also recognizes, our supreme court overruled *Huerta* in *State v. Hickman*, 205 Ariz. 192, ¶ 6, 68 P.3d 418, 420 (2003), holding that a court’s error in failing to excuse a biased prospective juror would be harmless when cured by a defendant’s peremptory strike, as long as the defendant was ultimately tried by a fair and impartial jury. *Id.* ¶¶ 40-41; accord *State v. Garza*, 216 Ariz. 56, ¶ 32, 163 P.3d 1006, 1015 (2007). Counsel has cited no reason—and we have found none—to conclude the jury that tried Reynoza was anything but fair and impartial.

¶4 Pursuant to our obligation under *Anders*, we have reviewed the record in its entirety and are satisfied it supports counsel’s recitation of the facts. Viewed in the light most favorable to upholding the jury’s verdicts, see *State v. Tamplin*, 195 Ariz. 246, ¶ 2, 986

P.2d 914, 914 (App. 1999), the evidence established that Reynoza and others executed a plan to sell cocaine to a buyer who was actually a Pima County Sheriff's deputy working undercover. According to the testimony of a confidential informant, Reynoza had driven a vehicle used to transport the cocaine. Reynoza's fingerprint was also found on the outer packaging of the cocaine recovered by a Pima County Sheriff's detective. Substantial evidence supported findings of all the elements necessary for Reynoza's convictions, *see* A.R.S. §§ 13-1003, 13-3408(A)(2), (7),¹ and his sentences are within the range authorized at the time he committed the offenses, *see* 1988 Ariz. Sess. Laws, ch. 66, § 1; 1991 Ariz. Sess. Laws, ch. 229, § 3. In examining the record pursuant to *Anders*, we have found no reversible error and no arguable issue warranting further appellate review. *See Anders*, 386 U.S. at 744. We therefore affirm Reynoza's convictions and sentences.

PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

J. WILLIAM BRAMMER, JR., Judge

GARYE L. VÁSQUEZ, Judge

¹The version of § 13-3408 in effect at the time Reynoza committed the offenses is the same in relevant part. 1990 Ariz. Sess. Laws, ch. 36, § 13.